

**ZONING BOARD OF APPEALS**

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ZBA 2010-36
Petition of Javad Moulai
92 Manor Avenue

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, May 6, 2010 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the petition of JAVAD MOULAI requesting a Variance pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw for demolition of an existing nonconforming structure and construction of a new structure with less than required front and side yard setbacks, on a 5,000 square foot lot in a district in which the minimum lot size is 10,000 square feet, at 92 MANOR AVENUE.

On April 16, 2010, the petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Laurence Shind, Esq. He said that also present were Javad Moulai (the "Petitioner") and Peter Heffernan, Architect.

Mr. Shind said that the direct abutters, Mr. and Mrs. Leon, had come to the Public Hearing to voice their support.

Suzanne and Scott Leon, 94 Manor Avenue, said that they were present to support Mr. Moulai's purchase of 92 Manor Avenue, demolition of the existing structure and the proposed construction. Ms. Leon said that their property abuts 92 Manor Avenue on the side and the back. She said that their only concern was that the three pine trees be taken down. She displayed a photograph of a tree that had fallen into their yard. Mr. Leon said that the owner has said that he will take the tree down.

Mr. Leon said that the property at 92 Manor Avenue has been neglected. He said that the proposed structure is reasonable. He said that they are not concerned with the portion of the proposed house that will jut out towards them. He said that it seems reasonable to allow a staircase there.

Mr. Shind said that the Petitioner is seeking a Variance. He said that the existing nonconforming dwelling will be demolished and a new dwelling will be constructed. He said that the left and right side nonconformities will be extended slightly.

Mr. Shind said that it is a 5,000 square foot lot. He said that the existing front and side yard setbacks are nonconforming. He said that the existing 550 square foot house was built in 1925. He said that existing lot coverage is 10.49 percent and proposed lot coverage will be 18.64 percent.

Mr. Shind said that the proposed house will contain approximately 1,320 square feet of total living area. He submitted Total Living Area Plus Garage (TLAG) calculations that were prepared by the Architect.

Mr. Shind said that the proposed house is being sited as close as possible to the existing house location, with a minimum of encroachments into the setback areas. He said that because of the size, the configuration and the topography of the lot, it would not be economically feasible to build on the exact footprint of the existing nonconforming structure.

Mr. Shind said that the lot is quite small at 5,000 square feet. He said that the lot is only 50 feet wide. He said that Manor Avenue does have a number of small lots but he could only find two lots that were as small as 5,000 square feet, at 56 and 58 Manor Avenue. He said that the size and the narrowness coupled with it being a corner lot having two front yard setbacks, make it economically unfeasible to construct a new dwelling within the existing setbacks.

Mr. Shind said that there are topographical and potential soil conditions that are further impediments to development and would support a Variance finding. He said that the rear of the lot slopes up somewhat steeply and the hill is filled with large boulders that suggest the possible presence of ledge. He said that the house cannot be sited further back to the rear without needing to excavate the hillside. He said that based on those conditions, the Petitioner felt that it would be appropriate for the Board to find that literal enforcement of the Zoning Bylaw would involve a substantial hardship, is not self-created and that a Variance would not cause substantial detriment to the public or the intent or purpose of the Zoning Bylaw.

Mr. Shind said that the Petitioner spoke with the neighbors and felt that there was widespread support for the project. Mr. Moulai said that he attempted to contact the neighbor on Oakdale Avenue but was unable to do so. He said that he left the neighbor a note with his phone number before he filed the application.

Ms. Leon said that they have a huge boulder in their basement. She said that they were unable to remove it.

The Board said that it is a difficult situation. The Board said that what is being proposed is modest. The Board said that evidence of soil condition issues was introduced at the Public Hearing.

The Board asked if there was a reason why the house was not slid further back on the lot. Mr. Heffernan said that the topography rises as you go back further into the lot.

Statement of Facts

The subject premises is located at 92 Manor Avenue, on a 5,000 square foot corner lot in a district in which the minimum lot size is 10,000 square feet, with a minimum front yard setback of 8.4 feet on Manor Avenue, a minimum front yard setback of 15.8 feet on Oakdale Avenue and a minimum side yard setback of 15.3 feet.

The Petitioner is requesting a Variance for demolition of an existing nonconforming structure and construction of a new structure with less than required front and side yard setbacks, on a 5,000 square foot lot in a district in which the minimum lot size is 10,000 square feet.

A Plot Plan dated 4/14/10, stamped by John F. McQuilkin, Jr., Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 4/14/10, prepared by Peter M. Heffernan, Architect, and photographs were submitted.

On May 4, 2010, the Planning Board reviewed the petition and recommended that the request be denied.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject structure does not conform to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the opinion of this Authority that literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship to the Petitioner, owing to circumstances relating to a long narrow lot, topography and soil condition, especially affecting this land but not generally affecting the Zoning District in which it is located, and that the hardship has not been self-created. The Board further finds that desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw is granted to allow for demolition of an existing nonconforming structure and construction of a new structure with less than required front and side yard setbacks, on a 5,000 square foot lot in a district in which the minimum lot size is 10,000 square feet, in accordance with the submitted Plot Plan and Construction Drawings.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

If the rights authorized by this Variance are not exercised within one year of the date time-stamped on this decision, they shall lapse and may be re-established only after notice and a new hearing pursuant to Section XXIV-D of the Zoning Bylaw.

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APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.

Richard L. Seegel, Chairman

Cynthia S. Hibbard

David G. Sheffield

cc: Planning Board
Inspector of Buildings
lrm